

COA NO. 41505-4-II

IN THE COURT OF APPEALS FOR THE STATE OF
WASHINGTON DIVISION II

STATE OF WASHINGTON,

RESPONDENT,

V.

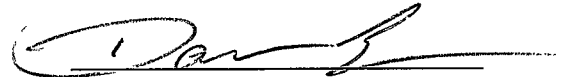
DANIEL RAYMOND LONGAN,

PETITIONER,

FILED
COURT OF APPEALS
DIVISION II
11 NOV 28 AM 10:35
STATE OF WASHINGTON
BY DEPUTY

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR COWLITZ COUNTY

SUPPLEMENTAL APPELLANT'S BRIEF



DANIEL RAYMOND LONGAN # 827885

G-A-13-1-L

COYOTE RIDGE CORRECTIONS CENTER

1301 N. EPHRATA AVE.

P.O.BOX 769

CONNELL WA, 99326-0769

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I. SUPPLEMENTAL ASSIGNMENTS OF ERROR

A. The trial court violated Mr. Longan's right to a public and open trial when it responded to two questions asked by the jury during deliberations without making a record of said proceedings.

B. The trial court violated Mr. Longan's right to be present when it responded to jury questions without him there.

II. ISSUES RELATED TO SUPPLEMENTAL ASSIGNMENTS OF ERROR

A. Whether a response to a jury questions in chambers off the record constituted a closure of the courtroom?

B. Whether the State can demonstrate that denying Mr. Longan the right to be present at the response to the jury's questions was harmless beyond a reasonable doubt where Mr. Longan could have meaningfully assisted counsel in suggesting a response to the jury questions?

III. STATEMENT OF THE CASE

Procedural History

Daniel Raymond Longan was charged with three counts of assault in the first degree and one count of each, attempting to elude and taking a motor vehicle, all with fire arm enhancements. Longan went to trial and was convicted of all counts. During trial Longan's Public trial rights were violated three times once during Voir Dire and twice during jury deliberation when the trial judge answered two separate jury questions without notification to Longan or his Presence. The record is unclear as to if counsel was notified. There is nothing in the record that shows these questions were even presented to trial counsel. The only part of the record that shows the presence of these questions is photo copies of the questions themselves and the trial judges answer to these questions. The first jury question concerned a few typos which would require them to convict Longan of a fourth assault instead of Taking a Motor Vehicle. The second is more important. In the second question the jury expressed an uncertainty as to whether there was enough evidence to convict Longan of a sentence enhancement without the firearm. Here if Longan would have been present with counsel (If counsel was even present) he would have

requested a nexus of control instruction and a Knowledge instruction be presented to the jury.

IV. ARGUMENTS

A. The trial court violated Mr. Longan's right to a public and open trial when it responded to two questions asked by the jury during deliberations without making a record of said proceedings.

B. The trial court violated Mr. Longan's right to be present when it responded to jury questions without him there.

Introduction

Because both of these claims of error arise from one factual predicate, Mr. Longan groups them together.

CrR 6.15(f), the court rule regarding answering jury questions, provides in pertinent part: The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon as appropriate response. Written questions from the jury , the court's response and any objections thereto shall be made a part of the record. The

court shall respond to all questions from a deliberating jury in open court or in writing.

Of course, the court rule operates within the confines of the state and federal constitutional protections guaranteeing an open and public trial.

CrR 3.4 (a) provides in pertinent part: *“defendant shall be presentat every stage of the trial.... except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown” CrRLJ 3.4(a) (same).*

Two Court of Appeals opinions have held that the trial judge may answer a question from deliberating jurors without the presence of the defendant, as long as defense counsel is present. State v. Jury, 19 Wn. App. 256, 576 P.2d 1302 (1978), and State v. Brown, 29 Wn. App. 11, 627 P.2d 132 (1981). These opinions, however were based on a prior version of CrR 6.15 (the prior version stated that the judge’s answer “ shall be given in the presence of, or after notice to the parties or their counsel”; emphasis added). The rule, as amended in 2002. No longer includes the disjunctive language as to the defendant’s presence, leaving this issue to be governed by CrR 3.4 (quoted above). Additionally, the holdings in jury

and Brown are difficult to square with other cases described above addressing the constitutional issues in this area of the law.

Accordingly, the committee recommends that the defendant be present for any in-court or substantive communication between the judge and a deliberating jury, unless the defendant has knowingly and voluntarily waived the right to be present. (WPIC 151.00)

VIOLATION OF THE PUBLIC AND OPEN TRIAL GUARANTEES

This court reviews *de novo* whether a trial court procedure violates the right to a public trial. *State v. Brightman*, 155 Wn.2d 506, 514, 122 P.3d 150 (2005). A defendant's failure to object at the time of a closure does not waive this right. *Brightman*, 155 Wn.2d at 514-15. Appellate courts presume prejudice where the court proceedings violate this right. *State v. Rivera*, 108 Wash. App. 645, 652, 32 P.3d 292 (2001). The remedy for such a violation is to reverse and remand for a new trial. *In re of Orange*, 152 Wn. 2d 795, 814, 100 P.3d 291 (2004).

The Sixth Amendment to the United States Constitution and Article I, section 22 of the Washington Constitution each guarantee a criminal defendant the right to a public trial. *State v. Russell*, 141 Wash. App. 733, 737-38, 172 P.3d 361 (2007). Additionally, article I, section 10

of the Washington Constitution states, “Justice in all cases shall be administered openly,” which provides the public itself a right to open, accessible proceedings. *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 36, 640 P.2d 716 (1982).

Article I, Section 10’s guarantee of public access to proceedings and Article I, Section 22’s public trial right together perform complementary, interdependent functions that assure the fairness of our judicial system. *State V. Bone-Club*, 128 Wn. 2d 254, 259, 906 P.2d 325 (1995); see also *State v. Easterling*, 157 Wn.2d 167, 187 (2006) (Chambers, J., concurring) (“ [T]he constitutional requirement that justice be administered openly is not a right held by the defendant. It is a constitutional obligation of the courts.”).

Protection of the right to a public trial requires a trial court “to resist a closure motion except under the most unusual circumstances.” *Bone-Club*, 128 Wn.2d at 259. A trial court may close a courtroom only after considering the five requirements enumerated in *Bone-Club* and entering specific findings on the record to justify the closure order. 128 Wn.2d at 258-59. A trial courts failure to undertake the *Bone-Club* analysis, which directs the trial court to allow anyone present an opportunity to object to the closure, undercuts the guarantees enshrined in

both article I, section 10 as well as article I, section 22. 128 Wn.2d at 258-59.

Relying on *Allied Daily Newspapers v. Eikenberry*, 121 Wn.2d 205, 210-11, 848 P.2d 1258 (1993), the Bone-Club court articulated five criteria to “assure careful, case-by-case analysis of a closure motion”.

Although this court will likely need additional portions of the record in order to finally resolve this issue, the existing fully supports the conclusion that the courtroom was improperly closed when the trial judge answered the jury questions without Longan present or holding a hearing on the record as to whether or not to provide a written or oral response to the jury questions.

First, the public was excluded from these proceedings by the trial judge answering these questions in chambers. The trial courts affirmative act of answering these questions in chambers, a part of the court not ordinarily accessible to the public, without any evidence of an invitation for the public to attend, had the same effect as expressly excluding the public. Judge’s chambers are not ordinarily accessible to the public. Nor does the presence of the lawyers, (if they were there, but not the defendant or anyone else) demonstrate that the *public* was entitled to attend this proceeding. Without an explicit invitation by the trial judge, no member of

the public would have understood that the trial judge's chambers were serving as a courtroom for the purpose of the proceeding. See *State v. Sadler*, 147 Wn. App. 97, 112-13, 193 P.3d 1108 (2008) (Chambers conference on *Batson* challenge violated right to open and public trial).

Next, this court must determine whether the right to public trial extends to a proceeding or hearing in response to jury questions. The public trial right applies to the evidentiary phase of the trial, and other "adversary proceedings." *Sadler, Supra*. A defendant does not, however, have a right to a public hearing on purely ministerial issues. *State v. Rivera*, 108 Wash. App. 645, 652, 32 P.3d 292 (2001) (neither public nor defendant had a right to be present when trial court addressed a juror's complaint about another juror's hygiene). However, the United States Supreme Court has made clear that when faced with an inquiry from the deliberating jury, "the jury's message should [be] answered in open court and...[defendant's] counsel should [be] given an opportunity to be heard before the trial judge respond[s]." *Rogers v. United States*, 422 U.S. 35, 39, 95 S. Ct. 2091, 2094-95, 45 L.Ed.2d 1 (1975).

Whether a court should answer a jury's question and what that answer should be is certainly not ministerial matter. A trial court has discretion whether to give further instructions to a jury after it has begun

deliberations. CrR 6.15 (f) (1); *State v. Ng*, 110 Wn.2d 32, 42, 750 P.2d 632 (1988). Because there were several potential responses to the juror's question the hearing on this issue was adversarial and part of trial. Thus, the trial court erred by closing the courtroom for these proceedings.

This error mandates automatic reversal.

VIOLATION OF THE RIGHT TO BE PRESENT

A defendant has a state and federal constitutional right to be present at all stages of the proceedings. A criminal defendant has a constitutional right to be present at every proceeding at which his presence bears a "reasonably substantial" relation to fairness of proceeding:

The constitutional right to presence is rooted to a large extent in the confrontation clause of the Sixth Amendment, but we have recognized that the right is protected by Due Process Clause in some situations where the defendant is not actually confronting witnesses or evidence against him. In *Snyder v. Massachusetts*, 291 U.S.97, 54 S. Ct. 330, 78 L.Ed.674 (1934), the court explained that a defendant has a due process right to be present at a proceeding "whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge....[T]he presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only."

United States v. Gagnon, 470 U.S. 522, 526 (1985)(per curiam).

Any communication between the court and the jury in the absence of the defendant is error and must be proven by the State to be harmless beyond a reasonable doubt. *State v. Caliguri*, 99 Wn.2d 501, 509, 644 P.2d 466 (1983). We apply the harmless error standard set forth in *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). A constitutional error is harmless if the court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result without the error. *State v. Rice*, 120 Wash.2d 549, 569, 844 P.2d 416 (1993).

Mr. Longan's constitutional right to be present was violated when the Court held these proceedings in response to the jury inquiry, but did not permit him to attend. The court did not make a reference to this proceeding on the record and there is no record that shows that counsel was informed and allowed to interject his say on his client's behalf. The question is whether the State can now demonstrate its harmlessness beyond a reasonable doubt.

Longan contends that in order to show harmlessness beyond a reasonable doubt the State must demonstrate both that the jury question's involved are not ones which counsel would be likely to consult the defendant, or if it they are not ones for which the defendant, if consulted,

would be likely to have an answer that would sway the judge. Although any answer by any party on this issue now is speculative, the jury's questions in this case were the type of question's that a defendant (concerned about being unjustly convicted of special verdicts) would urge counsel to answer. And, as Longan demonstrated before an answer should have been given. The record is unclear as to who was present at these proceedings. The trial transcripts show that the jury was excused at 4:50 p.m. (see appendix 1 VRP at page 166 line 20), and there was a short proceeding which occurred outside the presence of the jury which ended at 4:53 p.m. (see appendix 1 VRP page 169 Line 5) When the court recesses. Court does not reconvene according to the trial transcripts until 5:54 P.M. (see VRP page 169 Line 6). There is no indication in the record as to a notification of trial counsel of the questions from the jury. There is no record of the in chambers private proceedings which occurred in answer to these questions, other than the photo copies of the questions themselves. (See Appendix 2). The governing court rule here is 3.4 (see appendix 3) where it is explained. Longan was not notified by counsel about these questions and is unclear if counsel was even notified as to their existence at the time either. (See appendix 4) Longan's affidavit, where he states that he was not present and was unaware of the questions, and his right to be present until recently.

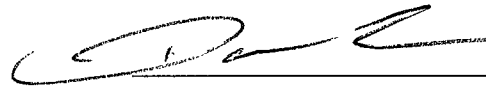
V. CONCLUSION

Based on the above, this court should reverse Longan's conviction and remand for a new trial. In the alternative, this court should Vacate Longan's special verdicts and remand for resentencing.

VI. LIBERAL CONSTRUCTION REQUEST

The petitioner respectfully requests that this court afford liberal construction to this petition in accordance with *Haines v. Kerner* 404 U.S. 519, 520 (1972).

Respectfully submitted this 21th, day of November 2011.



Daniel Raymond Longan #827885

Coyote Ridge Corrections Center

G-A-13-1-L

1301 N. Ephrata Ave.

Connell Wa, 99326-0769

Appendix 1

you have a reasonable doubt as to the question, you must answer "no."

When all of you have so agreed, fill in the Special Verdict Forms to express your decisions. The Presiding Juror will sign them; notify the bailiff, who will conduct you into court to declare your special verdict.

You then have a total of five Special Verdict Forms. The first reads as follows: "We, the jury, having found the Defendant guilty of Assault in the First Degree as charged in Count I, return a special verdict by answering as follows: Question: Was the Defendant, Daniel Raymond Longan, or an accomplice, armed with a firearm at the time of commission of the crime of Assault in the First Degree as charged in Count I?" And you have additional Special Verdict Forms for Counts II, III, IV, and V.

So, I'd ask the jury to return to the jury room and commence your deliberations.

(Jury excused at 4:50 p.m.)

(The following proceedings occurred outside the presence of the jury.)

MS. SHAFFER: I just want to make sure that the other instructions didn't go back.

THE COURT: Yes, I just had her take 'em.

1 MS. SHAFFER: Well, that was the issue with sending
2 them back, as the definition of firearm are slightly
3 different on each one, that's why we didn't --

4 THE COURT: Okay, the definition of reasonable doubt
5 needs to be included.

6 MS. SHAFFER: All right.

7 THE COURT: Diane?

8 All right, other than the reasonable doubt
9 instruction, are there any others that do need to go
10 back with those, or should not go back with those? My
11 preference would be to send the whole set back. I
12 realize the firearm instruction is different. The jury
13 has been clearly told, this is what applies here. And,
14 actually, I'm not certain that the firearm instruction
15 is different. The definition of a firearm is exactly
16 the same, it just references was the Defendant or an
17 accomplice armed.

18 MS. SHAFFER: I would -- I would really prefer just
19 to send the reasonable doubt instruction back.

20 THE COURT: Mr. Ladouceur?

21 MS. SHAFFER: I mean -- I think that would avoid any
22 appellate issues where (sic) sending the entire packet
23 back -- because that -- the other packet doesn't discuss
24 the nexus, and that -- that's a key part of the firearm
25 enhancement.

1 THE COURT: Well, we certainly -- we have additional
2 instructions that apply to those verdicts that do not
3 apply here.

4 What's your position?

5 MR. LADOUCEUR: Well, I'd like to see the
6 instructions that were -- Counsel is proposing just the
7 reasonable doubt instruction?

8 MS. SHAFFER: I'm not proposing anything. The one -
9 - the one that I proposed regarding the Special Verdict,
10 everyone was given a copy of this morning, and no one
11 had any objections. And, so, the issue is that the
12 Court wants to send back a reasonable -- the reasonable
13 doubt instructions from the main package.

14 THE COURT: We reference reasonable doubt in these
15 instructions, I think it would be improper not to send
16 them back that information without a definition.

17 Since they've already seen these instructions,
18 it's not like there's something wrong with them, or it's
19 something that they don't -- haven't dealt with before.
20 My preference would be to send all the instructions
21 back.

22 MR. LADOUCEUR: Your Honor, I'll agree with your
23 position on that.

24 THE COURT: All right.

25 Send all these back.

1 Okay. I don't know how long the jury will be
2 out. We should keep everybody around, and I want to
3 thank those in the audience for maintaining their
4 composure, I realize this is a difficult circumstance.

5 (Court recesses at 4:53 p.m.)

6 (Court reconvenes at 5:54 p.m.)

7 (The following proceedings occurred
8 outside the presence of the jury.)

9 UNIDENTIFIED FEMALE: Your Honor, who calls for a
10 mistrial?

11 THE COURT: You can talk to Mr. Ladouceur about
12 that.

13 UNIDENTIFIED FEMALE: [Inaudible].

14 Mr. Ladouceur?

15 MR. LADOUCEUR: Um-hum.

16 UNIDENTIFIED FEMALE: Are you going to request a
17 mistrial for your inadequate representation?

18 THE COURT: Okay, ma'am, that's all as of right now.

19 UNIDENTIFIED FEMALE: You told me to talk to him.

20 THE COURT: Okay, not here; not like that. He's
21 worked too hard on this to accept that sort of comment.

22 That'll be all; you understand?

23 All right.

24 (Jury escorted in at 5:57 p.m.)

25 (The following proceedings occurred

Appendix 2

FILED
SUPERIOR COURT
DATE: 2008 JUNE 24
COWLITZ COUNTY
RONIA BOOTH
BY: AB

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

St.

Plaintiff(s),

vs.

Daniel Longan

Defendant(s).

No. 07-1-00431-6

QUESTION FROM THE
DELIBERATING JURY AND
COURT'S RESPONSE

Do NOT indicate how the jury has voted.

JURY QUESTION:

Form E has typo - one statement says count I
it should refer to count II
Form G has a misstatement - it says we found the defendant
guilty of ASSAULT AS charged in Count IV - it should say we
found him guilty of taking A motor vehicle

Presiding Juror / Date

Date and time received by the Bailiff:

5:30

6/24/08

DKC

COURT'S RESPONSE: (After affording all counsel/parties opportunity to be heard.)

Please return the special verdict forms to
the Bailiff and use the set provided.

Judge

Date and time returned to the jury:

6/24/08

5:50pm

Scanned

FILED
SUPERIOR COURT
DATE: 2008 JUNE 24
COWLITZ COUNTY
RONA. BOOTH
BY: AB

State
Plaintiff(s),
vs.
Daniel Longan
Defendant(s).

QUESTION FROM THE DELIBERATING JURY AND COURT'S RESPONSE

JURY QUESTION: The firearm was not found. Is this a problem for answering the special instructions. On instruction 24 it says circumstances under which the firearm was found.

Lutyn B. Fry June 24, 2008
Presiding Juror / Date

COURT'S RESPONSE: (After affording all counsel/parties opportunity to be heard.)

COURT'S RESPONSE: (After affording all counsel/parties opportunity to be heard.)
Please consider all the evidence, or lack thereof, relating to firearms in your deliberations.

Date and time returned to the jury: 6/24/08 5:15pm

Appendix 3

WPIC 151.00

BASIC CONCLUDING INSTRUCTION

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. [For this purpose, use the form provided in the jury room.] In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given [the exhibits admitted in evidence,] these instructions [,] and _____ verdict form[s] for recording your verdict. [Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.]

You must fill in the blank provided in [the] [each] verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Because this is a criminal case, each of you must

CONCLUDING INSTRUCTIONS

WPIC 151.00

agree for you to return a verdict. When all of you have so agreed, fill in the verdict form(s) to express your decision. The presiding juror must sign the verdict form(s) and notify the bailiff. The bailiff will bring you into court to declare your verdict.

NOTE ON USE

Use bracketed material as applicable. A bracketed sentence may be used by courts that provide jurors with forms for submitting questions during their deliberations. A sample form is set forth in Appendix G.

Use WPIC 180.01, Verdict Form A—General, with this instruction.

COMMENT

Procedures for handling questions from a deliberating jury.

The instruction explains for jurors, before they begin their deliberations, the steps they must take if they need to ask the court a question during their deliberations. When deliberating jurors send out such a question, the judge should number the question and review it with the lawyers outside the presence of the jury. The judge should respond to the question in open court or in writing (if the question relates to a point of law, the answer should be written). If the jury is brought back into open court, the lawyers and the defendant should have the opportunity to be present. The judge should supplement any written response by telling jurors to consider the response together with all the other written instructions in the case. The judge should enter the question, response, and any objections in the record. The judge should carefully refrain from appearing to comment on the evidence, coerce a verdict, or be unfairly prejudicial to one side or the other. For more complete discussions of the issues involved in handling questions from deliberating jurors, see CrR 6.15(f); CrRLJ 6.15(e); see also Recommendations 38-40 of the Report of the Washington State Jury Commission (see Appendix H in Volume 11A of Washington Practice); Ferguson, 13 Washington Practice, Criminal Practice & Procedure, §§ 4413, 4610, and 4611 (3rd ed.) (regarding procedures for communicating with jurors during deliberations); *State v. Koontz*, 145 Wn.2d 650, 41 P.3d 475 (2002) (regarding repeating testimony for deliberating jurors); and WPIC 4.68 (regarding additional jury instructions), 4.68.01 (regarding changed instructions), 4.70 (regarding inquiring as to the probability of a verdict), and 4.81 (regarding deadlocked juries).

Question from deliberating jury—Presence of counsel and defendant. A defendant has a constitutional right to be present at every stage of a trial. This includes the right to be present for communications between the court and jurors after deliberations have

begun. See *State v. Rice*, 110 Wn.2d 577, 757 P.2d 889 (1988) (constitutional right to be present for return of verdict); *State v. Caliguri*, 99 Wn.2d 501, 664 P.2d 466 (1983) (stating, in a case involving replaying testimony for a deliberating jury, that "[i]t is settled in this state that there should be no communication between the court and jury in the absence of the defendant"); *State v. Shutzler*, 82 Wash. 365, 144 P. 284 (1914); see also *United States v. Treatman*, 524 F.2d 320 (8th Cir. 1975) (stating that "it is settled law that communications between the judge and the jury in the absence of and without notice to defendant and his counsel are improper," and "[t]he appellant's right to be present is constitutionally guaranteed by both the Fifth and Sixth Amendments to the federal constitution"); see also CrR 3.4(a) ("defendant shall be present . . . at every stage of the trial . . . except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown"); CrRLJ 3.4(a) (same).

Two Court of Appeals opinions have held that the trial judge may answer a question from deliberating jurors without the presence of the defendant, as long as defense counsel is present. *State v. Jury*, 19 Wn.App. 256, 576 P.2d 1302 (1978), and *State v. Brown*, 29 Wn.App. 11, 627 P.2d 132 (1981). These opinions, however, were based on a prior version of CrR 6.15 (the prior version stated that the judge's answer "shall be given in the presence of, or after notice to the parties or their counsel"; emphasis added). The rule, as amended in 2002, no longer includes the disjunctive language as to the defendant's presence, leaving this issue to be governed by CrR 3.4 (quoted above). Additionally, the holdings in *Jury* and *Brown* are difficult to square with the cases described above addressing the constitutional issues in this area of the law.

Accordingly, the committee recommends that the defendant be present for any in-court or substantive communication between the judge and a deliberating jury, unless the defendant has knowingly and voluntarily waived the right to be present.

Bailiff's communications with deliberating jurors. Bailiffs are prohibited from any communications with deliberating jurors that may affect the case. CrR 6.7; CrRLJ 6.7; see, e.g., *State v. Booth*, 36 Wn.App. 66, 671 P.2d 1218 (1983) (court should have granted a mistrial after the bailiff had an unauthorized conversation with deliberating jurors about why a certain witness had not testified).

The court rule expressly allows the bailiff to ask jurors if they have agreed upon a verdict and to allow communication upon order of the court. CrR 6.7; CrRLJ 6.7. Moreover, the bailiff may communicate with deliberating jurors in order to take care of housekeeping needs, eating, lodging, personal arrangements, and family messages for jurors. See *State v. Smith*, 43 Wn.2d 307, 261 P.2d 109 (1953); *State v. Carroll*, 119 Wash. 623, 206 P. 563 (1922) and 41 A.L.R.2d 227, 257.

Appendix 4

GENERAL AFFIDAVIT

State of Washington

County of Franklin

Before the undersigned, an officer duly commissioned by the laws of
Washington, on this 21 day of November, 2011,
personally appeared Daniel Raymond Longan who having been first duly sworn depose and say:
I was never informed of any communication or questions from the jury to the trial judge at the
time of trial. I was never informed of my right to be present at any proceedings involving jury
questions and never waived this right. I don't know if my attorney was even informed as there is
no record to show any proceedings took place other than two photo copies of the questions. If my
attorney was not present which at this time which, I do not believe he was. I was also deprived of
my right to representation at these proceedings. My presence at these proceedings is a
constitutional right that I would have exercised. Thus my right to a open and public trial was
violated three times during trial.

Signature *Da*

Sworn and subscribed before me this 21st day of November, A.D. 2011.



Mf
Notary Public for the state of Washington
Residing in Connell
Commission expires 10-10-2012